IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

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ICONTROL NETWORKS, INC., a Delaware corporation,	)	Civil Action
Plaintiff,	)	
v.	)	
ZONOFF INC., a Delaware corporation,	)	
Defendant.	)	No. 14-1199-GMS

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Wilmington, Delaware
Monday, March 14, 2016
10:00 a.m.
Markman Hearing

- - -

BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

APPEARANCES:

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-and-
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THE COURT: Good morning. Please, take your seats.

Let's start with introductions, if we could.

MS. MATTERER: Good morning, Your Honor.

Mary Matterer from Morris James on behalf of the plaintiff. I have with me James Yoon and Ryan Smith from Wilson Sonsini.

MR. BARILLARE: Good morning, Your Honor. Jody Barillare from Morgan Lewis. With me are co-counsel John Gorman and Ken Davis from the Philadelphia office of Morgan Lewis.

THE COURT: Good morning.

Okay. How much time did we allot for this?

MR. YOON: Yes, Your Honor. The Court allotted five hours for the hearing. I don't think we will need five hours.

THE COURT: I think we should be planning to be out of here by 1:00.

MR. YOON: I think that's very fair, Your Honor, and very clear.

Your Honor, the parties have agreed, there is only nine terms in dispute. We have agreed on the order. We are going to address each term one at that a with the parties going back and forth and the Court can ask questions. The only question we had is whether or not the

Court believed it would be useful or not to have a short background tutorial. We can do it either way, but we wanted to leave it up to the Court.

THE COURT: Do you have a uniform tutorial? You don't have to.

MR. DAVIS: We haven't prepared a tutorial, Your Honor. We don't have any objection to the tutorial. We just want to make sure that that doesn't cut into the time for both parties.

THE COURT: Counsel, if you think it useful for me to, as you like to say, at a high level be given some understanding of the technology, that's fine.

MR. YOON: Your Honor, for a few minutes. It only provides the context. We don't go into the claim terms. There should be nothing controversial at all, Your Honor.

Mr. Smith will provide the tutorial, Your Honor.

MR. SMITH: Good morning, Your Honor.

THE COURT: Good morning, Mr. Smith.

MR. SMITH: Good morning, Your Honor.

Your Honor, this is a pretty brief tutorial, just to provide some high-level understanding of the technology at issue.

At a high level, the technology in this case involves home automation technology as well as home security

:03:09 technology.
:03:10 First, with respect to home automation, that
:03:13 general concept has been around for a number of decades,
:03:16 even going back to let's say the late seventies/early
:03:22 eighties we could find some discussions of home automation.
:03:26 Back at that time frame, the home automation technology was
:03:30 in some ways fairly simple. You would have some sort of --
:03:34 and this would be in somebody's house, for example. You
:03:37 could devise some sort of controller or sometimes you hook
:03:41 it up to your early, your old IBM PC. You could basically
:03:45 plug this into the wall.
:03:48 What it would do is it could send signals over
:03:52 your home power line. For example, with respect to devices
:03:55 you wanted to control, for example, a lamp, you could plug
:03:59 in a different module, and that module would hook on to your
:04:04 power outlet, and it would receive signals from the
:04:07 controller, and then basically turn on and off lights.
:04:09 You could have multiple different of these
:04:13 modules in your house control, different lights, to turn on
:04:14 fans, things like that. What the controller would do would
:04:21 be, it could send out an address, basically, with each of
:04:28 these commands. And you would set the receiving unit, to,
:04:32 focusing, for example, on a lamp, with a specific address.
:04:33 For example, you have got your system set to Setting A, we
:04:37 will call this House A and I will call that lamp that I have

:04:40 No. 1. So when you send the address A1, the lamp will
:04:47 recognize the particular address and react to the command.
:04:50 It would turn on and off.
:04:52 You could have different addresses for different
:04:55 devices.
:04:56 So basically this would be a system where the
:04:59 phone has broadcast out some sort of commands and hope that
:05:01 the receiving unit and would get the command and actually do
:05:06 something.
:05:07 These were around for a long time. It turned
:05:10 out they were fairly unreliable, it was fairly cumbersome to
:05:10 set this up. And there were relatively expensive subs. It
:05:22 ended up being something that POSITAs used, people that were
:05:25 into this type of technology would maybe set up at their
:05:29 house, so there would be those gadgets, but it wouldn't be
:05:31 the typical thing people would have in their homes.
:05:34 This technology, which was generally called X1,
:05:38 I think you can even buy the devices today. We looked
:05:42 online. They still sell them today.
:05:47 Basically, this home automation technology
:05:49 seemed to stagnate and in some ways stay the same. And in
:05:54 some ways, home security was similar in a way, it stagnated
:05:57 for a long time, although it was still quite popular. But
:06:04 in general home automation, a citizen would be someone who
:06:05 has a house, and there is a home security panel. And the

panel, typically, in that case, the panel would be connected to wires, to different sensors. There are two general type of sensors. One type of sensor is called a contact sensor you put on your doors or your window. The other type of sensor is a motion sensor. The contact sensor would help monitor the perimeter of the house, while the motion sensors would monitor the interior of the house.

When the security panel was armed, the panel would detect changes in sensors, for example, a door opening. For example, if it was armed, it would use the phone line to call a central monitoring station, who would monitor all the different houses, and if they saw some sort of alarm going off, they would typically contact the homeowner, and see if there was an emergency. If they couldn't contact the homeowner, they would probably call the police and fire department.

THE COURT: That is still going today?

MR. SMITH: Yes. That is still going today. These are incredibly popular.

Probably 15 years or so ago, iControl came in existence. And one of the things it was trying to do was to take the traditional home security system and bring it into an age where people were starting to use internet connected devices.

What it intended to do and was successful in

:07:37 doing was basically augmenting the traditional home security
:07:40 system with additional features. So, for example, iControl
:07:43 had a gateway. The gateway would be next to the security
:07:47 panel, and the gateway would tap into the information that
:07:52 the security panel has about the security sensors. And the
:07:56 gateway would also connect to servers, which would keep
:08:00 track of all the information about the different gateways in
:08:03 people's homes. The servers in turn would be connected to
:08:03 the internet and mobile devices.

:08:08 One thing this would allow you to do, for your
:08:11 mobile device, for example, you could arm or disarm the home
:08:18 security system. You could check the status of your home
:08:20 security system to see if your home security system was
:08:23 actually armed when you left the house. If you didn't arm
:08:30 it, you could turn it on remotely, or you could turn it off,
:08:32 for example, if someone was watching your house while you
:08:37 were on vacation, and check your cats or something.

:08:41 That was the main additional feature that
:08:43 iControl provided. But also iControl integrated via home
:08:50 automation with home security, because now you have a
:08:50 gateway, this gateway could have additional functionality.
:08:52 For example, there is now a wireless protocol called SeaWeb
:08:58 which allows you to have wireless home automation devices to
:09:02 connect to a gateway. On you could also have cameras
:09:08 connected to a gateway through wireless connection, or

:09:11 wireless internet connection.
:09:11 This opened up a lot of functionality. For
:09:12 example, you could tie the home automation devices to the
:09:20 security device. For example, if a sensor indicated doors
:09:26 opening, if the security panel was teched out, the gateway
:09:29 can look at that information and say, based on a rule, let
:09:34 me turn on the lights, or something like that, and turn them
:09:36 on. Or if the front door opens, maybe you can turn up the
:09:42 thermostat because you assume that people are now home and
:09:46 possibly you can keep the house safe.
:09:47 What IControl did was basically brought the home
:09:49 automation technology together, which had been stagnant for
:09:53 a while, and the home security technology, and try to move
:09:58 it into the internet age.
:10:00 The other area of technology that is even more
:10:03 recent is a do-it-yourself type home security system. This
:10:08 would be, instead of actually having the security company
:10:11 come in and set up the and sell the sensors, you could try
:10:11 to do it yourself. You would provide an electronic device.
:10:20 These devices, this particular one iControl sells. But it
:10:21 would have a camera actually built into it so you don't have
:10:24 to set up a camera, it would have things, sirens and
:10:28 microphones built into it. So you would set in device up.
:10:32 This device could also interact with z-wave devices,
:10:38 security sensors. You could do much of the same

functionality that you did before, but it's now basically one box that you could set up and plug into your home and work.

That is basically, at a very high level, the general technology that pertains to the six patents at issue in the case. Today we are here to discuss four patents where there are disputed claim terms.

I will turn it over to Mr. Yoon.

MR. YOON: Yes, Your Honor.

Kind of starting off, a couple things. The parties have worked very hard, consistent with your guidelines rules, to narrow things down. As the Court knows, as to the forecasting, that issue today in the claim construction hearing, ultimately there are a total of 11 claims in these patents. All of the terms that we are going to discuss today are in the independent claims of the patents.

Additionally, Your Honor, and in the booklet, you will see that the slide number in the booklet matches the number on our slide. So this would be Slide 7. The parties, as you can see, have actually agreed on a number of terms for the purposes of construction. And the parties subsequent to today's hearing will be submitting a stipulation so Your Honor will have a recording of all the terms we have in fact actually agreed on with regard to that.

I think we are looking at, on Slide 8 and 9, Your Honor, nine terms that are going to be discussed at the claim construction hearing today, Your Honor. These nine terms are presented on Slides 8 and 9 in the order in which we are going to present them today. The parties agreed upon the order.

In addition, Your Honor, four of the terms will be on the '690 patent, one on the '591, and then two on the '871 and two on the '842.

If Your Honor would like me to go into it now, we can go into the first term, which is in the '690 patent, Your Honor, and this begins on Slide 10.

This is the patent entitled Method and System for Monitoring Events. Your Honor, as you saw in the tutorial, you could have a detection device at the house that would connect to a gateway, and then the gateway would connect to a server, and the server would connect to a mobile phone as an illustration of the example. So the detection device would communicate with the local control unit of the gateway, which would communicate with a remote monitoring station, which would be the server, which would then communicate with the remote user, which would be the person using their PC or their iPod. That is the what context for this one.

The first term we will be discussing is "control unit for receiving signals from a variety of detection devices monitoring events pertaining to security."

That's on Slide 11.

If you turn to Slide 12, Your Honor, you can see that in the context of Claim 1, all four of the terms that we are going to be addressing in the context of the '690 are found in independent Claim 1 in the first two elements. The brackets we have added to identify the terms in the order that they are going to be discussed today, Your Honor.

With regard, Your Honor, I think I have done a claim construction hearing before Your Honor, our typical format on each of the terms is to provide you our construction, their construction, then provide you the location in the briefing where both parties have discussed the term for index purposes.

With regard to the term "control unit," the parties dispute whether the term control unit itself is a means-plus-function element. IControl believes that the term control unit in the context of the patent provides sufficient structure, the local control unit or alarm control unit. Zonoff's position is that under Williamson this is a means-plus-function element and they have identified the structure set forth there in terms of it.

With regard to most of the terms today, Your

:15:02 Honor, I think you will appreciate, the parties have worked
:15:07 to reach agreement. And if you look at Slide 14, there is
:15:08 no dispute as to the function. Everyone agrees that that
:15:15 operation, receiving signals from a variety of detection
:15:18 devices monitoring events pertaining to security, should be
:15:20 given its plain and ordinary meaning.

:15:23 There is no real no dispute that the low power
:15:27 radio receiver 517 of Figure 6 receives signals from a
:15:32 variety of detection devices.

:15:32 Where the parties disagree, Your Honor, are the
:15:33 two points on Slide 14 below, primarily, which is whether it
:15:39 is a means-plus-function element. It is our position Zonoff
:15:39 is attempting to incorporate structure, that it is a
:15:39 means-plus-function element, that do not correspond to the
:15:45 performed receiving function. That is the issue we intend
:15:56 to discuss today.

:15:57 With regard to background, Your Honor, because
:15:59 the term control unit doesn't use the words means, even
:16:03 under Williamson, they bear the burden of showing that, in
:16:07 fact, it's a means-plus-function element. And the test is
:16:12 whether or not, for example, in this case the specification
:16:14 provides a sufficiently definite structure to a person of
:16:19 ordinary skill to take it out of means plus function.

:16:23 We believe a person of ordinary skill in the art
:16:25 reading the patent would have a sufficiently definite

structure so there would not be means plus function.

If we go to Slide 16 -- this is actually an unusual case, Your Honor. I think both counsel agreed that we don't see a case that is actually like this.

So the first test is whether or not the claim language recites structure and therefore it would not be a means-plus-function element. And here it's interesting, because there is no dispute that the claim language does in fact recite some structure. You can see that the term control unit in Claim 1, it says the control unit having, then it identifies a means for transferring information and having a control means.

So we believe that, even starting with Williamson, the first question is whether or not the claim language recites structure. Here, there is clearly two structural elements, which we are going to address, Your Honor, in the disputed terms later, the means for transferring and the control means. But there is no doubt, Your Honor, that the language "control unit having" indicates that the structures of the means for transferring and the control means are, in fact, in the claim language structure for the claimed control unit.

So we believe under Williamson that already demonstrates that control unit is not a means-plus-function element because there is a structure required. It's recited

:17:55 in the claim.

:17:58 But the issue I think the parties dispute is the
:18:01 language "receiving signals from a variety of detection
:18:08 devices monitoring events pertaining to security."

:18:11 The position of Zonoff is that the language
:18:15 there indicates there is no structure for the receiving
:18:19 part, and that a person of ordinary skill would not believe
:18:23 there is sufficient structure. We believe, Your Honor, that
:18:25 that is clear shown in the specification of the '690 patent,
:18:30 and the person of ordinary skill would understand there is
:18:33 sufficient structure for that.

:18:35 I don't believe there is any dispute between the
:18:38 parties, Your Honor, that the specification clearly
:18:42 indicates that a control unit is referring to the local
:18:45 control unit or the alarm control unit. So the person of
:18:50 ordinary skill reading Claim 1 would understand that control
:18:53 unit is referring to either local control unit or alarm
:18:57 control unit. If you look at the language of Claim 1 and
:19:00 the specification, if you look here on the screen -- I have
:19:06 Figure 1 of the patent -- and Figure 1 of the patent, you
:19:08 see there is an alarm control unit, ACU50. And the patent
:19:13 talks about, "In some embodiments of the invention, the
:19:16 system comprises a plurality of detectors making up a
:19:19 detector array, one or more interface units, and a local
:19:24 control unit or alarm control unit, ACU.

Your Honor, you can see here is the detectors, No. 10. That is communicated either by a local radio link or fixed link to the alarm control unit. There is no doubt that the alarm control unit or the local control unit is what is in the specification that receives the signals from the detector devices, Your Honor.

And then the patent right here says the "alarm control unit, this is a local control unit, the ACU is adapted to receive signals generated in response to events by the detection devices.

So there is no doubt, Your Honor, that a person of ordinary skill in the art -- I don't think this is disputed by the parties -- reading the patent would understand when they see the term control unit in the claim language, would understand that the embodiment of this is the alarm control unit or local control unit in the specification, and that is illustrated, for example, in Figure 1.

The question is whether or not that term alarm control unit or local control unit has a definite structure to a person of ordinary skill reading the patent. If you look at, for example, Figure 6 of the patent, we believe that it absolutely does. You can see in Figure 6 of the patent it is labeled Alarm Control Unit. In that the Figure 6 is the alarm control unit that is blown out about 50 of

Figure 1. And you can see that in Figure 6 the alarm unit definitely has structure. It has a power supply. It has a CPU. It has other structures.

So we believe a person of ordinary skill in the art, reading the patent and looking at the specification, would in fact have an idea of a sufficient structure. The key here, Your Honor this is the difference from Williamson, there is no black box, you know, most of the time when people argue that it is a means-plus-function element, there is a box that says module or there is a box that says the function.

Here the specification clearly illustrates an example of structure for the alarm control unit. We believe that the fact that the specification does that provides the sufficiently definite structure that takes it out of the means-plus-function element. We believe that someone reading the patent would do so. We don't think there is a dispute between the parties that a structure is there, but the test is whether it is a sufficiently definite structure in order to be so.

Your Honor, this is Slide 19. Let's assume for a moment that it is in fact a means-plus-function element. This is the second question. If it is a means-plus-function element, are they incorporated structures that are unrelated to the claimed receiving function, which is the receiving

:22:19 signals from the detection devices.

:22:21 So, Your Honor, although we believe it is not a means-plus-function element, I am going to address it as if it is a means-plus-function element right now to address both issues at once for Your Honor.

:22:31 The key issue is what the specification clearly links to the claimed function. That is the test. Your Honor, I think it's absolutely clear in the specification of the patent what is clearly linked. Your Honor, on the screen here, you have in Slide 20 a cropped version of Figure 1. There is no modification. I wanted to focus on the key part. But it is a cropped version of Figure 1 and a cropped version of Figure 4a.

:23:01 I think it is very important to look at this before we go to Figure 6.

:23:06 Your Honor, if you look at this figure, you can see that in Figure 1 it talks about a local radio communicating the detector to the alarm unit. Do you see that, Your Honor? Here, these are the detectors from the array: a sound detector, a fire detector, a panic button detector. You can see that they are communicating to the ACU over that radio at 868 megahertz receiver. If you look at the receiver in the alarm control unit, Your Honor, you can see it says 868 megahertz receiver. We believe that someone reading the patent would absolutely understand that

the structure in the alarm control unit that is receiving that 868 megahertz signal from the detectors is in fact the local receiver 517. We believe that that is clearly linked in the specification for performing the claimed function.

What Zonoff is arguing, Your Honor, is that the specification, they argue, only links the ACU itself to the claimed function, and because the ACU itself is linked to the claimed function, therefore, all the structures of the ACU must be incorporated into the means-plus-function element. We believe that is not at all true. A person of ordinary skill in the art would look at the specific figure, and they would know that the detectors are sending a radio signal of 868 megahertz, and they would know that the receiver 517 is labeled with 868 megahertz.

Your Honor, this is really what the fight is as to the means-plus-function element. On the screen on Slide 22, Your Honor, are all the structures that Zonoff claims are incorporated into the means-plus-function element as corresponding to the claimed receiving function.
Zonoff claims that the non-volatile memory is tied to it. Your Honor, that function is just storage. Zonoff claims that the power supply and battery backup is tied to the claimed receiving function. That is just power supply, Your Honor.

A speaker is output. That is not receiving a

detector signal.

And Zonoff really in their briefing doesn't argue that any of these structures are performing the function. What they are arguing was, because there is a sentence that says the ACU receives the signal, everything in the ACU therefore is a corresponding structure, which we believe is not the test of the law. The person of ordinary skill in the art, they would read the whole patent, they would look at the figures, they would understand that the receiver performs the receiving function.

Especially here, Your Honor, where it says 868 megahertz, and there the 868 megahertz from the receiver, they would know that's the structure that performs the claimed receiving function.

And, Your Honor, we believe, at the end of the day, because the specification does provide a definite structure for the control unit, it is not a means-plus-function element. But if it is a means-plus-function element, the structure is the structure disclosed in the spec with respect to the receiver, and none of the other structures.

Thank you, Your Honor.

THE COURT: Before you sit down, have the parties agreed on the meaning of the control unit?

MR. YOON: Your Honor, the parties, I think,

:26:43 agree on the control unit as to the meaning of the function. They agree what the terms of the functions are. But they don't agree as to whether or not the term control unit by itself connotes a structure. I don't know if there is an actual dispute that matters other than whether it is means plus function or not.

:27:03 THE COURT: I am thinking about a lay jury, not composed POSAs, and wondering whether they will need some guidance, because control unit, those words are all over the place.

:27:18 MR. YOON: Your Honor, I think that's right. I think there are other terms that may be more confusing. I think, because the function language is pretty clear in this patent, and we believe that the experts agree what the function is, the jury will know what the control unit does. I think the confusion could be that if Your Honor, depending on your construction, identifies certain structures, if it is a means-plus-function element, we may need to provide some technical information to explain what those structures are.

:27:50 THE COURT: What if I agree with you, it is means plus function, does your view change?

:28:01 MR. YOON: I think we could be open to if the parties think that a glossary would be beneficial. I don't think that this would be the fight. And I think this would be very easy to describe for the jury.

THE COURT: Regardless if it is the fight or not, I would like the parties, if you can, to agree to the mean of control unit, and put it in a glossary.

MR. YOON: I am pretty confident, once your Honor decides on whether it is means plus function or not, we have been successful on a number of terms, I am sure we could agree on this one.

THE COURT: Having said that, I will give the other side a chance to see if they agree.

MR. GORMAN: Good morning, Your Honor. My name is John Gorman. I am going handle the '690 and the '591 patents. And my partner, Ken Davis, will be handling the argument for the next two.

Some housekeeping terms. May I pass copies of our presentation up?

THE COURT: Yes. Did you want to say anything about the discussion I just had?

MR. GORMAN: I hear you, Your Honor. Yes, Your Honor.

Do you still have that last slide up that you had?

As we are waiting for it to get up, Your Honor, neither party has suggested that control unit needs to be construed. But I think you have identified one of the

:29:49 challenges with this patent and the claims, because control unit is an ambiguous claim sitting there in a vacuum.

:29:57 We felt the reason that didn't need to be construed is because we felt it was a means-plus-function term, so there is going to be corresponding structure that is going to be specifically identified for that, so there is no need for a construction.

:30:08 Another way of getting at the same problem is to go, to the extent that we are hearing that the control unit has all of these components, is to construe control unit and look to the patent where it says "control unit is," and take all of those things and make that the construction of control unit. That would certainly address our issue, that that term, as construed, would therefore certainly provide sufficient structure so that means plus function would not be appropriate.

:30:37 In the absence of a construction with that level of specificity, we don't think that a construction of control unit is going to be particularly helpful at this point. We will certainly consider and discuss it, but I think that's where we are right now.

:30:53 One point of clarification here. Mr. Yoon had said a number of times over the course of his presentation that the parties aren't in disagreement. I am not sure I am going to catch all the ones where I think that may not be

:31:06 accurate. But let me point out one big one, which, as you
:31:08 will see here, for agreement, in the second bullet it says
:31:11 the "low power radio receiver 517 of Figure 6 of the '690
:31:16 patent performs the function" at issue here. We do not
:31:19 agree with that, Your Honor, just to be clear.
:31:34 I have a lot of these throat-clearing slides
:31:38 here, too, so I will probably whip through them quickly,
:31:41 Your Honor. The way we have structured this, Your Honor,
:31:42 we, too, like plaintiff, have set up what the parties'
:31:45 respective positions are. It is hard to see in this slide.
:31:49 In your slide, red means disagreement.
:31:52 Yes, there is agreement -- well, I should say,
:31:56 first of all, the fundamental agreement is whether or not
:32:00 this claim term, "control unit for receiving signals from a
:32:04 variety of detection devices monitoring events pertaining to
:32:10 security," that entire term, if means plus function, we say
:32:10 yes. If Your Honor agrees with us, there is no dispute of
:32:13 the function and there is -- and we know what the
:32:16 corresponding structure is.
:32:18 So post-Williamson, the law is clear. There is
:32:24 means-plus-function treatment of the claim if a claim term
:32:27 fails to recite sufficient definite structure or else
:32:27 recites function without performing reciting specific
:32:35 structure for performing that function, ignore that first
:32:40 "no" on the first bullet, Judge. That is a mistake.

Pointing to structure in the specification is not enough. Simply saying, well, there is structure in the specification, if that were the case, you would never have a means plus function, because every means-plus-function claim, you would eventually, in most cases, go to the specification and identify structure. So it is not just the existence of the structure in the specification that takes this out of the means-plus-function world.

To avoid means-plus-function application, the specification must make clear that the term itself, and the term we are dealing with here is control unit, that term itself has sufficient structure.

Now, there is a lot of similarities with the Williamson case that apply here to show why the term control unit doesn't, in fact, have sufficient structure. You recall that in the Williamson case, they looked at the term "distributed learning control module." First, the Court said, well, let's take a look at the term module. Well, they found that that is the just a generic description for software or hardware that performs a specified function, and gave other examples -- mechanism, element, device. These are all nonce words.

I submit, Your Honor, that "unit" is exactly a word like "module." Unit is a generic description for hardware. It is akin to mechanism or device, just like in

:33:56 Williamson. Now, in Williamson, you also had distributed
:34:02 learning control module, those modifiers. The Williamson
:34:06 Court said, the fact there is prefixes for this nonce word
:34:10 doesn't make it any less a nonce word. While the presence
:34:14 of modifiers can change the meaning of module, the presence
:34:19 doesn't provide structural significance.
:34:20 It is the same thing here. In fact, it is the
:34:24 same word here. "Control" is the modifier in both of these
:34:24 cases.
:34:24 Standing alone, control unit does not have
:34:29 structural significance. No party in this case says that a
:34:32 person of ordinary skill in the art wouldn't understand that
:34:37 a control unit is X. No one is saying that. So the
:34:39 question is, in the absence of that, what structure is there
:34:45 in control unit? The answer, is: None.
:34:48 Now, what have they have done is said, well,
:34:52 there is no agreement that control unit is the local control
:34:55 unit or the alarm control unit. Well, the term isn't local
:34:58 control unit. The term isn't alarm control unit. It is
:35:00 control unit. We submit, Your Honor, that, in a vacuum,
:35:03 that has insufficient structure to say that you can avoid a
:35:07 means-plus-function application.
:35:14 They made the argument in their briefs, and we
:35:18 heard it again today, that the claim itself provides
:35:18 sufficient structure to allow a person of ordinary skill in

the art to appreciate that control unit has structure. But there is a number of problems with that argument.

First, this is a means-plus-function limitation. You will see, if you will indulge me, Your Honor, this in red here is the claim term we are talking about. This is the function, receiving signals from a variety of detection devices for monitoring events. We heard plaintiffs say this has two components to it. It has a control unit having a means for transferring and a means for actively controlling. By the way, both of those are in dispute here, Your Honor. But there is no authority, and they have pointed to none, that says that you are going to be able to find sufficient structure in the context of the claim by pointing to other means elements that are not literally reciting structural elements.

There is two other problems we have with this argument, Your Honor. Remember, we are talking about the case law in Williamson. It talks about avoiding means-plus-function application only if the claim itself provides structure for performing that function. Look at this function. This function is receiving signals from a variety of detection devices.

Well, look at the other functions. The other functions -- this is receiving signals in the red. That is showing the same figure we just saw on the screen about the detection devices. There is signals. The ACU, that black box right there, that is receiving signals. But the other two functions are for transferring information and for transferring information and actively controlling one or more detection devices. These are fundamentally different functions. And there is nothing to suggest that whatever it is in the control unit in these particular means limitations that is carrying out those functions is the sufficient structure to carry out the function that we are actually addressing in this term right here.

And when not following this argument, Judge, we have a dispute over whether or not those last two means-plus-function terms -- and there is no dispute that those last two in green and blue are in fact means-plus-function terms. We have a dispute over whether or not there is even any structure that corresponds to sufficiently carry out those functions. It would be improper to the extent they don't have that structure to rely on those as the structure for the overarching control unit for receiving signals step.

That is the reason why we believe that control unit does not have sufficient structure to be treated not as a means-plus-function term.

The next issue is, if Your Honor concludes that, in fact, this is a means-plus-function term, then Your Honor

:38:22 needs to identify corresponding structure sufficient to
:38:28 carry out that function.
:38:29 The case law requires that the structure
:38:36 identified in the specification needs to be clearly linked
:38:39 to the function at issue. If you look through the
:38:41 specification -- we just looked there to a number of
:38:45 pictures which Mr. Yoon pointed out which pointed to various
:38:49 aspects of an alarm control unit 50, a specific embodiment
:38:52 of an alarm control unit. None of those components of that
:38:57 control unit are ever in the specification link. At no
:39:02 pointing does the applicant ever satisfy its burden under
:39:06 the quid quo of means-plus-function claim language, and say
:39:06 I am going to identify this structure for carrying out the
:39:12 function with respect to the low power radio transmitter.
:39:15 It does, however, say in the abstract, right
:39:19 here, control unit 50 for receiving signals from a variety
:39:24 of detection devices. That is where the applicant chose to
:39:29 link something to the function that we have here.
:39:32 The problem, Your Honor, is control unit, as you
:39:37 have pointed out, is a mandated term. That we don't think
:39:37 in and of itself that connotes structure. Where does one go
:39:41 to, when they have pointed to a control unit as a tie and
:39:45 expressly linked to this function? Well, Your Honor, they
:39:49 have said, with respect to the alarm control unit, this
:39:52 particular embodiment, they have listed all the various

components of these.

You have heard plaintiffs cite to the Wenger case for the proposition for, well, you are not supposed to be importing the structure that is not necessary to perform the function. But there is no case, Your Honor, that says that you are allowed to parse components and subcomponents out of something, out of a larger generic unit, where that larger generic unit has been the thing that has been tied to the function.

We cited in our briefing the Catalina case and the St. Clair case, which we think supports this idea where the applicant is actually tying something to the function, it would be improper for you to then take the subparts of that where the applicant itself has not identified those subparts as linked to the function.

That, Your Honor, is the reason why we think this is a means-plus-function term and that the corresponding structure is what we they have listed as a structure for, quote-unquote, control unit, which is like their separate name for the function.

MR. YOON: Your Honor, a couple minutes to respond?

THE COURT: No problem.

MR. YOON: If I could have Slide 19 to start off with.

:41:25 Your Honor, I think the parties have done a good
:41:27 job to identify exactly what the disputes and the arguments
:41:30 are. I wanted to respond to a couple points.
:41:34 Starting with Slide 19, one of the things that
:41:38 counsel did not focus on was the fact that the Federal
:41:44 Circuit has been very clear that the structure disclosed in
:41:52 Slide 15, was structure for the control unit, Your Honor.
:41:55 As in Williamson, which counsel kept focusing on the claim
:42:00 language, Williamson is very clear that the specification
:42:03 itself can provide sufficiently definite structure. The key
:42:09 issue here between the parties is you start with the claim
:42:13 language, and looking at Slide 12 here, a person of ordinary
:42:18 skill in the art would be reading this claim language in
:42:21 light of the specification. We cited multiple portions of
:42:25 the spec in our briefing. It says, the "control unit for
:42:29 receiving signals from a variety of detection devices." The
:42:34 question here is whether or not the specification provided
:42:38 sufficient structure.
:42:39 The key point here, Your Honor, is that the
:42:47 patent is absolutely clear that the control unit is what
:42:54 receives the ACU, the alarm control unit, or local control
:43:00 unit, is what receives the signal. So a person of ordinary
:43:04 skill in the art, seeing control unit, will see that the
:43:05 reference to control unit or local control unit or alarm
:43:08 control unit is made in the specification and it clearly

indicates that that is what receives the communication from the detection devices.

And the patent then provides the structures for that alarm control unit, that we believe is sufficiently definite.

Your Honor, moving to the second point, the clearly linking, because I think that is an important point, what he says is a disagreement between the parties, is if you look at Column 22, Line 22 to 27, here on Slide 21, it says that the alarm control unit may be in wireless communication. That's what it says. Then the specification, Your Honor, says Figure 6, the ACU 50 further comprises an 868-megahertz low power radio receiver. And it says there is a radio signal. And as, Your Honor, we saw before, it shows that there is a radio signal.

We believe that absolutely the specification clearly indicates that the low power receiver component of the alarm control unit receives the signal. It says the ACU receives a wireless signal, and it specifically identifies the structure of the ACU for receiving that signal, that 868-megahertz low power radio receiver. And the specification teaches that the detectors send out a radio signal at 868 megahertz.

So we don't believe there is any dispute that in fact the specification does clearly link the radio receiver.

:44:46 That, Your Honor, is my only point.
:44:48 THE COURT: I am going give you another
:44:51 response, and I will give you the last word.
:44:54 MR. GORMAN: Just to address that last point,
:44:57 there is a dispute. If you were to take 517 here, yes, that
:44:58 is a low power radio transmitter. There is nothing that
:45:01 says that low power radio transmitter is what is receiving
:45:03 signals from the detection devices. We are going to see
:45:04 with Term 3, that low power radio transmitter is receiving
:45:10 signals and information from the control unit. In fact, the
:45:14 applicant actually links that function to the low power
:45:20 radio transmitter. There is nothing that links this to this
:45:23 receiving signal sent out, which Mr. Yoon just said, he put
:45:23 up a slide, right here, control unit receives signals. That
:45:28 is our exact point. It's the control unit, that's what the
:45:31 applicants did, and that's how they did it.
:45:33 MR. YOON: Your Honor, I think this was
:45:35 accidental by counsel. There is in Figure 5 labeled 507 a
:45:40 low power radio transmitter. Figure 6 is the low power
:45:47 radio receiver 517. That very clearly receives the signals,
:45:52 we believe, from the detector device. We believe Figure 5
:45:56 is what is call the low power transmission, which is 507.
:46:00 MR. GORMAN: I was pointing to 515. But the
:46:04 point is the same. You will not find language that says the
:46:07 low power radio transmitter receives these signals . You

are going to find this control unit.

THE COURT: Let's go to the next one.

MR. YOON: The one thing I learned from my time here is I have to try to keep it moving.

Moving to the "control means for actively controlling one or more detection devices." This is Slide 24. The parties agree that the function is actively controlling the detection devices.

THE COURT: The reasons we have these brilliant people come to work for us, my law clerk reminds me, I am not going to entertain any indefiniteness argument of this kind. Just as a matter of housekeeping. That is my position.

MR. YOON: That is the principal dispute between the parties, Your Honor, because of the fact they agree on the function.

MR. GORMAN: Your Honor, to be clear, we are not expecting you to make any certain ruling on indefiniteness today, because as part of the means-plus-function analysis for Term 2 and for Term 3, there has to be some identification of corresponding structure. If, in fact, there is no identification of corresponding structure, if Your Honor doesn't find any, at some later date there may be based on that finding indefiniteness arguments.

THE COURT: No, I get that.

:47:47 MR. YOON: Understood, Your Honor. From a bookkeeping standpoint, measuring it, we believe the Court can construe it today. Our position is the term can be construed. If Your Honor feels you need testimony to determine whether or not a structure is there or not, that would be for another day.

:48:03 THE COURT: I doubt I will come to that conclusion. Mr. Yoon, you know my track record.

:48:10 MR. YOON: I know Your Honor's practice.

:48:13 THE COURT: They is not going to drive me over the cliff. I do prefer this to be reviewed on a proper basis, that isn't to say I don't ever, I got that, where there is a question of law, the circuit has an absolute right to do that.

:48:32 I am tempted to get testimony in every one. We will never get a 30-day order out. We are already backed up.

:48:48 MR. YOON: Your Honor, just to conclude on the claim construction issue today, Your Honor, the parties again agree on the function. And the issue, Your Honor, is they agree it is a means-plus-function element. As to the control means, there is no dispute it is a means-plus-function element, and there is no dispute as to the meaning of the function. The only dispute between the parties is does the specification identify a corresponding

structure -- we believe it very much does -- and then what structure is that that is identified as corresponding. We will keep it very much to focused to that.

Your Honor, to start out with, on Slide 27. There is no dispute, because obviously the issue is actively controlling one or more detection devices. I want to be clear the example device we are going to use is a microphone. As we discussed in our papers, there is no dispute that microphone is a detection device. If you look at Claim 7 and 28 of the patent, you can clearly see that the detection device is a microphone.

And the specification and the abstract also indicates that a microphone is a detection device. So the patent only requires controlling one or more of them.

I just wanted to make clear that when I talk about the microphone that is a detection device. I don't think that is disputed between the parties. I wanted to lay the foundation, Your Honor.

The real issue then is: Is there a structure identified in the specification as performing the actively controlling function of the microphone?

Your Honor, it could be more clear, from Slide 28, Your Honor, if you at the '690 patent, at Column 16, Lines 21 to 24, a microphone 502 with a dual monostable 503 to control its operation. You could not more clearly link

:50:47 to a structure for controlling the detecting device. It is
:50:49 the dual monostable 503 to control its operation. That's
:50:55 expressly stated in the specification, as corresponding to
:50:59 controlling a detection device. That control is the
:51:03 microphone.
:51:04 At Column 16, Lines 43 to 44, "The dual
:51:09 monostable 503 is used as a means of switching the
:51:14 microphone on for a short period and then off again." You
:51:18 see that, Your Honor? That one there is at Column 16, Lines
:51:22 43 to 44.
:51:22 THE COURT: I can see, Mr. Yoon.
:51:26 MR. YOON: I apologize.
:51:27 So, Your Honor, the one issue that -- we believe
:51:31 that that structure, and that structure alone, we believe,
:51:34 is required and we believe it's clearly linked to control
:51:36 its operations.
:51:37 I would note that in their answering brief,
:51:41 Zonoff claims that you would need this structure RC300 to
:51:46 control the dual monostable. They say that that is a
:51:51 processor, and they argue, I believe, that that is a generic
:51:54 processor so that you wouldn't need the algorithm.
:51:55 That seems to be the argument that they have
:51:57 fallen back on, because the structure dual monostable is
:52:01 clearly identified as the structure here.
:52:04 We don't believe, Your Honor, that RC300 is the

structure because the specification clearly links the dual monostable 503 as controlling. It turns the microphone on and off. We believe the switch also turns the microphone on and off.

But Zonoff has argued that somehow this RSC300 is also necessary. It is not linked in the specification for performing the function. But somehow they get into an argument of whether or not an algorithm is disclosed, Your Honor. Here there is no dispute, no meaningful dispute. Look at the text at the bottom box here: The switch is disabled for a short period, e.g., .5 seconds, then enabled for a period of 1.5 seconds.

There is no dispute that this is actually describing how the microphone is turned on and off. We believe that the specification clearly links the electronic switch and the dual monostable 503 as controlling the operation of the microphone. And we don't believe that RFC300 is linked or is a corresponding structure.

THE COURT: Thank you, Mr. Yoon.

MR. GORMAN: One point of clarification, Your Honor. It wasn't clear to us in the papers exactly what the plaintiff's position was on this. In the opening brief, we heard that their construction was the, quote-unquote, applicable portion of the control unit. Then we saw in their responsive brief that they were, for example, the dual monostable circuit or an electric timing switch. I understood the application to be not "e.g." "but i.e.," meaning "that is."

MR. YOON: Yes, would be the backward switch, the electronic switch. The dual monostable or electronic switch.

MR. GORMAN: If that is the case, Your Honor, whatever construction you adopt, we think it would be inappropriate for you to include this language of "the applicable portions of the armed control unit." Whether you agree with plaintiff or not, there is simply no reason to put in that language that could be confusing to the finder of fact. You simply need to identify whatever the structure is that corresponds to the function.

We don't have the same issue, obviously, that we had in term one about whether or not this is means plus function. That has been agreed to. To be clear, again, there has to be this clear linking of the structure to the function. As we said, referencing applicable portions isn't sufficient to do that.

The law requires that the structure that is identified perform the entire function. So what is the function here? The function is not merely controlling one or more detection devices. It is actively controlling one or more detection devices. That term, "actively controlling," you will not find in the specification. If you look and search to try to find actively controlling, you won't find it. This is the structure that is linked to actively controlling, as the claim says, the functions.

IControl points to only two structures which they say control a microphone. And Mr. Yoon is correct, we don't dispute that a microphone is a detection device. But one of the issues here is that the claim says you have to actively control one or more detection devices. Even to the extent they have shown control unit actively controlling that microphone, it's not clear to us whether or not that would be sufficient for the entire function for looking for structure that does one or more.

And there is nothing, nothing in the specification that says, beyond the microphone, there is no example of controlling or active controlling of any other type of detection device. There is certainly a list of other types of detection devices in the '690. But you won't find any description of actively controlling.

Mr. Yoon is correct. Our position is that the dual monostable circuit and the electronic timing switch are not what is linked to this entire function of actively controlling one or more detection devices, because it ignores the role of the RSC300 controlling the microphone. You will see that, in fact, the applicants have said every time they talk about controlling the single detection device, they talk about the role of the RSC300 within the processor.

Here is the portion of the specification in Slide 19 that deals with the dual monostable circuit, which talks about a means of switching the microphone, the single detection device, on and off for a short period, and then off again in response to a signal from the processor. You can see in Figure 5, 503 up here is the dual monostable. 502 is the microphone. Here is the processor. You will see right here, we have blown it up, on-off, it is the RSC processor working to control this dual monostable. That is to the extent there is active controlling here, this is what is activating the control device.

Your Honor, to find corresponding structure if you look for it, you couldn't ignore that RSC300. Likewise, "for the electronic timing switch, you will see in Column 16 on Slide 20 that it says that "This achieved in one embodiment by means of an electronic timing switch, which is activated by a signal from the RSC300."

So to suggest, to focus only on the dual monostable circuit or the electronic timing switch may issue the control, but to the extent these are examples of actively controlling, the Court's needs to take into account the role of what is activating this control, which is the

:58:31 **RSC300.**
:58:32 **It is our position that if this is going to be**
:58:34 **recognized as being a part of the control, in fact, there is**
:58:40 **an insufficient algorithm to explain how that processor is**
:58:45 **actually performing the steps of an algorithm to carry out**
:58:49 **its part of what's going on. Yes, there is description in**
:58:54 **20, in 19, these slides, you will see that they are talking**
:58:58 **about how the microphone or the circuit or the monostable is**
:59:01 **doing things, but there is nothing to explain what the**
:59:03 **RSC300 is.**
:59:06 **This is the proverbial black box, Judge, that**
:59:09 **makes it the reason why, if you are going to recognize the**
:59:12 **RSC300 as somehow being involved here, that is the reason**
:59:17 **why this structure is insufficient for Your Honor to say**
:59:20 **that the dual monostable and the electronic timing switch as**
:59:24 **the structure would not be sufficient. And that is why it**
:59:28 **is our position that it is not supported in the**
:59:31 **specification.**
:59:32 **MR. YOON: Thank you, Your Honor.**
:59:34 **If I could just have Slide 28. We will be very**
:59:37 **brief.**
:59:50 **Your Honor, I think we have two classic issues**
:59:54 **that come up in every means-plus-function case, Your Honor.**
:59:58 **Obviously, a device can only work with multiple structures.**
:00:01 **Those structures are not necessarily linked by the**

specification for performing the claimed function. The structure that is linked in the specification is the dual monostable 503 to control its operation.

The fact that a component gets commands from another component does not convert it to performing the claimed function and does not link it to the claimed function.

We believe that the specification is very clear that this dual monostable is the structure that turns on and off the microphone and thus actively controls it.

The second comment I would make, Your Honor, is that, as you know -- first of all, there is no expert declaration on the part of Zonoff that someone of ordinary skill in the art wouldn't know what the algorithm was. Here, it is very specific as to the operation: off for half a second, on for one and a half seconds.

Usually, Your Honor, where people fight about an algorithm, there is a vague term and no one knows the specificity of what needs to be done here. Here it is very specific as to what is going on. And therefore a person of ordinary skill in the art would know exactly what the command being sent to the dual monostable is, and therefore the algorithm being used by the processor. That being said, we don't believe that it is a generic processor or that it is linked.

We will move to the next term.

Turning to the next term, which is the means for transferring, again, Your Honor, the same issue as before is whether or not a structure disclosed in the specification, there is no dispute, Your Honor the function here for --

THE COURT: Hold on just a second.

Some clarity. I think we have the same ground rules on this one.

MR. YOON: Yes, Your Honor. They will come up a couple other times, Your Honor.

THE COURT: Highlight that for me, if you would.

MR. GORMAN: Just to make it easier, we are never going to be having a situation where we will be asking for a ruling on indefiniteness.

MR. YOON: Your Honor, the issue, obviously, different terms, different functions, it is the same issue we saw on the actively controlling. The parties agree it is a means-plus-function element. And we agree that the function should be given its plain and ordinary meaning.

So again, Your Honor, the issue is whether or not the patent identifies the structure to a person of skill in the art for performing the transfer function; if the patent does, what is that structure. That is the issue we are facing.

So a key point here, Your Honor, that we are

:03:20 dealing with, the key is, what is the test of determining
:03:25 whether someone would understand the structure. Here, it is
:03:28 important to point out, there is no expert testimony or
:03:30 declaration by Zonoff, but we are not going into the
:03:34 indefiniteness issue.
:03:35 Turning to Slide 34, Your Honor, the term that
:03:38 we are dealing with is "control unit having means for
:03:43 transferring information related to the reception of such
:03:46 signals to a remote monitoring station."
:03:49 Here, Your Honor, the signals are the signals
:03:52 from the detection devices. So the information related to
:03:56 the received signals is from the detection devices. That is
:03:59 sent to the remote monitoring station, which in the patent
:03:59 they call the AMS.
:04:06 Your Honor, this is illustrated here. It is
:04:08 important to understand when we talk about structures the
:04:12 patent teaches. If we look at Figure 1 of the patent, it
:04:16 shows the alarm control unit. I believe counsel for Zonoff
:04:21 pointed this out. It communicates with the remote
:04:24 monitoring station, or the AMS, via two differences ways,
:04:29 GSM, that is a cellphone, on a mobile link, or fixed
:04:34 telephone line. What the patent clearly teaches is that the
:04:37 AMS communicates with the ACU, for instance, via fixed or
:04:40 mobile telephony.
:04:43 Then they say that, the patent at Column 16,

Line 2 to 6, says the ACU adapted to transmit information relating to the generated signals, that's from here, to the AMS. So a person of ordinary skill in the art reading the patent would know that the ACU could communicate via cellphone or fixed telephone line to the remote station. We have been talking about the means for transfer.

Additionally, Your Honor, in Figure 4b, again, it illustrates the ACU communicating over the cellphone to the remote monitoring station. So a person of ordinary skill in the art would understand reading the patent that there is a wireless transmitter, Your Honor, that will communicate from the ACU to the monitoring station. That is the first thing. You know exactly the way it is going to communicate, either wirelessly or over a fixed telephone line.

The patent function again is transferring information related to the reception of such signals to a remote monitoring station. Again, Your Honor, a person of ordinary skill reading the patent would know the ACU communicates wirelessly cellphone-wise, for example, Your Honor, to the remote monitoring station or in a fixed telephone line. That's the way it transfers the information.

So the dispute between the parties is whether or not the transmitter 507 is the structure corresponding to

the means for transfer. That's the function.

What we had pointed to in our stack, it says "...the part of the ACU adapted to transmit information relating to the generating signal to the AMS, using the low power radio transmitter 507."

We believe that a person of ordinary skill in the art, having read to patent to know that there is a wireless transmitter from the ACU to the AMS, a wireless transmitter from the ACU to the remote monitoring station, and reading that text, would know that there is a wireless transmitter in the ACU that would transmit to the remote monitoring station.

The parties, Your Honor, dispute whether or not this low power radio transmitter is in fact a structure that transmits to the AMS. What the argument appears to be, classically, an argument about a comma. The argument that they appear to argue is that you could have multiple ACUs at a location, and this low power transmitter is for communicating between ACUs at a location, not communicating to the remote monitoring station.

That seems to be the argument between the parties. The key point, Your Honor, this is all in the context of knowing, the person of ordinary skill in the art knowing, that there is a wireless transmission from the ACU to the AMS, from the ACU to the AMS, and there is no dispute

that cellphone technology is well known and the structure for transmitting wirelessly is well known.

We believe that a person of ordinary skill in the art reading the patent would have a sufficiently definite idea as to the structure that would be transmitting information from the ACU to the AMS.

Your Honor, also, there is a question in the briefing about the modem. The parties in this case have met and conferred multiple times about claim construction. In the briefing Zonoff pointed out that iControl did initially identify the modem as one of the structures for transferring information from the ACU to the AMS. That was the structure we identified. There is no doubt that the modem is a structure to do that is disclosed in the patent. If you recall, Your Honor, the specification in Figure 1 shows a fixed telephone line communicating from the ACU. If you look at the modem 519, it connects to the phone jack, which would then be the fixed telephone line communication.

What the issue was, Your Honor, in the parties' meet-and-confer process, in the joint claim construction statement, Zonoff had identified a lot of structures that they claimed that corresponded to the control unit, and then they identified the low power radio transmitter, but they did not identify the modem. And we were trying to reach an accommodation. I think it just became a vestige. We never

disputed the fact that the modem would be a structure disclosed in the specification for the fixed telephone communication with the transmitter. So we do believe there is two structures that would be disclosed in the specification for performing the transfer function, Your Honor. The first structure would be a wireless transmitter, i.e., the GSM, for example, transmission. There is an argument as to whether 517 is a telephone transfer. I think that's the argument.

The second one is obviously we believe there is a fixed telephone line communication, which would be the modem.

Thank you, Your Honor.

MR. GORMAN: I am hearing some things for the first time today, Your Honor. We thought modem, they had that, in their opening briefing, and then they came back in their answering brief, and they hadn't taken the position of modem anymore, we briefed modem, and then they changed it to a low power radio transmitter. Or I think it was just before the opening brief. We briefed this concept of low power radio transmitter.

This idea of modem is new to us at this moment, so I may come back to that.

The other thing I just wanted to make clear, I see in some of their slides that the construction that they are asking you to now make is wireless transmitter, not low power radio transmitter, this is a little bit different, again, than what we saw in the briefs, although I think the number is still associated with the low power radio transmitter.

Our position, Your Honor, is that if you look through reading the specification, you are not going to find anyplace where the applicant has linked structure to this function of transferring information related to the reception of such signals through a remote monitoring station.

What you will find is you will find language where they talk about the part of the ACU that transfers information related to the reception at such stations. But they don't identify what that is.

I think that plaintiff's counsel is right, we have a disagreement over whether or the passage is, in fact, providing structure for the low power radio transmitter. I think, when you take a look at that passage specifically, but if you look at other portions of the specification other than what plaintiffs have pointed to, you will see that the low power radio transmitter is actually involved in transmitting information between portions of the alarm control unit itself, and not performing the function in the claim, which is transmitting information from the ACU

:12:42 outside to the remote monitoring station.
:12:45 Remember, Your Honor, here is the claim in
:12:48 context. It is a means for transferring information
:12:52 relating to signals. So the means is any control unit that
:12:57 is transferring information to the remote monitoring
:13:00 station.
:13:02 We just saw all these same pictures here. I
:13:08 think one point of confusion is -- I don't have the exact
:13:11 pictures that Mr. Yoon put up -- there is a lot focus on
:13:15 these links between the ACU and the monitoring station.
:13:19 Here is another picture that they put up that shows the same
:13:20 thing. They pointed it out and said, aha, wireless
:13:25 transmission, but not low power radio wireless transmission,
:13:29 or radio at all. It is not described as radio transmission.
:13:33 There is certainly nothing in the specification that says
:13:36 that is the part that is doing things. They point to
:13:40 nothing.
:13:41 Let's not be confused that whatever is here we
:13:45 can assume is radio transmission, because the applicants
:13:48 don't do it.
:13:49 Remember, we have to link the structure to the
:13:51 function. We can't just guess. That is the quid quo pro of
:13:57 means plus function.
:13:57 Here is the low power radio transmitter, 507,
:14:01 within the context of generating the signal's receiving

:14:04 unit, which is part of the alarm control unit. There is no
:14:06 dispute that the low power radio transmitter is part of the
:14:07 ACU. We both agree on that. You will see here in Column 16
:14:12 it talks about that the alarm control unit can comprise
:14:16 physically discrete units which are able to communicate with
:14:20 each other via a local radio link. This is where the low
:14:26 power radio transmitter comes into play.
:14:29 Here is the portion of the specification, Column
:14:33 17, that plainly has the monitor part. It is a little hard
:14:35 to see. You can see it certainly in your slides. We tried
:14:39 to show the coloring a little different in how we think this
:14:42 should be read.
:14:43 It says, the concept -- let me get some context
:14:47 here.
:14:47 It is talking about a situation where you have a
:14:50 control unit that hears a sound and the control unit needs
:14:53 to figure out if that's the type of sound that it needs to
:14:57 escalate to the remote monitor station. So it is going to
:15:01 make that determination. So in discussing that activity
:15:03 generally, if the two sounds match, the sound that it hears
:15:07 and the sound that it is comparing it to, then the generated
:15:09 signals receiving unit sends a signal to the part, and the
:15:15 part is part of the ACU is transmitting information relating
:15:20 to the generated signals to the AMS, that is a clause, using
:15:23 the low power radio transmitter.

Here, "using the lower power radio transmitter" is modifying signal. What is receiving the signal is the exact part that we are trying to figure out today, and they don't say what it is.

The part of the ACU is actually transmitting information relating to the generated signals to the AMS.

If there were any question about whether or not that's what the low power radio transmitter is doing, you can look further in the specification at Column 18. Slide 31 shows that this is another example. They are talking about sort of the same activity going on.

They talk about the sound, then the signal, again the same clause, to the part of the ACU, that is transmitting information to AMS, via low power radio. How do you know that that is talking about internal communication with the ACU? How do you know? Because the next paragraph says, "the ACU then forwards this message to the monitor station." This is the function that we are talking here. This function here, this sending via low power radio, this is making clear that that low power radio transmitter, as we saw earlier in the specification, is talking about communication within the alarm control unit, because, Your Honor, the low power radio transmitter is not linked to the function here, there is no link to the function, we are asking that you rule there is no support in

the specification for this.

MR. YOON: Could you give me your Slide 31 again?

Your Honor, just very briefly.

The key point, as you noticed, even here it says the ACU forwards this message to the monitoring station by means of a wire line or wireless telephony. The wire lines is the modem that we discussed already, Your Honor. The wireless telephony we believe here, to a person of ordinary skill, would be the wireless transmitter that would transmit a cellphone. And we believe that is a well-understood structure to someone of ordinary skill.

That's all on this one.

MR. GORMAN: Your Honor, I am sorry, I forgot to make one point I wanted to make about modem.

The problem that you have with modem is you are not going to find anything that says, "and the modem performs this function." What you have here is a lot of reading of tea leaves. They say, well, what would a person of ordinary skill in the art be trying to figure out? Well, it would have to be a modem. Modem might be involved in it. But wireline or wireless telephony is not referring to a part of the ACU. That is referring to the connection outside the ACU. That is referring to the connection between the ACU and the AMS. They are not linking the modem. That it what they argue, but that is not what the case law requires.

MR. YOON: Your Honor, I refer you to Figure 6 on that.

Turning back to the next element, Your Honor, this one is actually a little different than the other ones. The reason it is different is that the parties do disagree as to the meaning of the claimed function. Here iControl believes that the claimed function should be given its plain and ordinary meaning. We believe that Zonoff is rewriting the claimed function. And then the parties dispute the particular structure.

There is no dispute that sufficient structures are disclosed. It is only what structures correspond to the claimed function. It is a little different than the others. The parties do agree that the alert generation database is a structure that performs the claimed function. The parties disagree as to what that function is and whether or not additional structures, in particular 102 and 103, are incorporated, Your Honor.

So turning first, Your Honor, just to make clear that the alert generation database is the structure performing the claimed function, on Slide 42, Your Honor, you have the excerpt of Zonoff's answering brief. This is Zonoff's brief, Your Honor. You can see, "The specification requires, and indeed iControl concedes, that automatic evaluations routines are stored in the alert generation database."

That's Zonoff brief. We agree, Your Honor.

Our position is that the corresponding structure is the alert generation database 104. There is no dispute between the parties that the automatic evaluation routines are in fact stored there.

Focusing on what the parties disagree on, Your Honor, if you look at Slide 43, you see that iControl's position, like the other means-plus-function elements, is that the claimed functions should be given their plain and ordinary meaning. Zonoff, on the other hand, rewrites the claimed function. Your Honor, on Slide 43, the red language is the language from the claim that Zonoff seems to have deleted from its construction. And the blue language is the language that Zonoff has added to the construction of the claimed function.

We believe, Your Honor, that the claim language here is easily understood, and there is no reason needed to rewrite the claimed function. Zonoff cannot point to any disclaimer or any intention to limit or restrict the meaning of the claimed function term without a clear disclaimer, without waiving a specific intent to restrict the claimed function to specific embodiments.

The plain language of the claim should apply, Your Honor. We can go into why there is no reason to vary it.

The first issue, Your Honor, with regards to it, again, that the function here is storing the automatic evaluation routines to initiate the automatic transfer of information to a chosen remote terminal.

As you saw, Your Honor, the parties agree that alert generation database is identified as performing that function. IControl believes that the alarm monitoring system 102 and the ACU configuration database 103 is not clearly linked to the function.

Your Honor, we believe they are rewriting the function in order to then link 102 and 103 to the structure. If you just keep the function as the plain and ordinary meaning, it is undisputed that 104 does the claimed function, Your Honor.

So the key for us, Your Honor, is, again, I would point out that 104 is supported -- I don't think it is disputed -- but at Column 8, Lines 24 to 35, and Column 8, Lines 50 to 55.

Let's talk about that why 102 does not perform the claimed function. And it doesn't perform the claimed function because 102 is not the way to store everything, Your Honor. The patent clearly tells you that alarm monitoring system 102, this is Slide 49, is the intelligence embedded in the AMS. It does not perform the claimed storing function.

Similarly, 103 does not store the routines to initiate if the automatic transfer of information. If you noted, Your Honor, in Zonoff's construction, they removed the word automatic from the construction. Automatic is what's stored in the ACU. They removed that and they added the blue words to therefore link 102 and 103. And 104, as we saw by Zonoff's own admission in the its, 104, the automatic examination routines are stored in the alert generation database.

Your Honor, with regard to the function, let's go to the functional issue here at Slide 43, and I will be quick. There is nothing in the specification that the term automatic, storing automatic evaluation routines to initiate the automatic transfer of information to a chosen remote terminal needs to be reinterpreted to, quote, "allow the monitoring station to identify events detected by detection devices."

The word identify doesn't appear in the claimed function. They are picking one example in the spec unrelated to the claimed function in order to incorporate it.

They also have here, the automatic transfer of

:24:16 information is, quote, "determined by the nature of the
:24:18 identified event."
:24:19 Again, that is nowhere found in the claim
:24:22 language. This is not a case of interpreting the claim
:24:26 language so you can make it understandable. They are just
:24:28 imposing new meanings and restrictions that we don't believe
:24:32 are supported by the specification.
:24:38 Thank you, Your Honor.
:24:40 THE COURT: Thank you, Mr. Yoon.
:24:45 MR. GORMAN: Up until a few moments ago, we had
:24:48 thought that plaintiff's position on corresponding structure
:24:53 was non-volatile memory, because that was the issue that
:24:56 they took in their briefs, so that is what we prepared for.
:24:58 The good news is that we have already had a slide prepared
:25:02 that we no longer have to address because they have changed
:25:05 their position.
:25:07 Let me, in light of that, make a couple of
:25:12 points about the nature of the dispute.
:25:12 The means plus function, that is the other
:25:15 issue, yes, the parties disagree over whether or not the
:25:18 function needs to be construed.
:25:20 If I now understand that they are saying that
:25:23 the alert generation database is the corresponding
:25:27 structure, we can agree that is certainly part of the
:25:30 structure. So there is no dispute on whether that passage

is involved there.

I will say that our position about the alarm monitoring system 102 and the alarm control unit configuration database 103, it is our position that that is structure regardless of whether you adopt our proposed function or you decide not to construe the function. Either way, we think that is appropriate structure that corresponds to the function.

Just to explain a little bit, Your Honor, what we are doing here and why we asked for a construction of the function, first of all, there is no question that you have the power and the obligation where necessary to construe a function if that's appropriate. And within this function, the reason why we have asked for a construction is not simply to impart a limitation here, but because there is a term in here that we think requires construction. That term is "automatic evaluation routine." It is sitting there in the claim. What does it mean?

We think the Court needs to address what that ambiguity means because we don't think that is immediately apparent. And you would find that evaluation routines through the specification. It is referenced infrequently, and frankly, not in a tremendously useful way with respect to that term phrase.

We put up here on Slide 37 some of the places

where that is.

What you do know from reading the specification in Column 1 is that the automatic evaluation routines are what stores the programmable storage means. The programmable storage means is that term that you are construing here today. And so we know that there is a linkage between the programmable storage means and storing these automatic evaluation routines. And so we can figure out what the automatic evaluation routines are by looking at what is stores, what does the specification say is stored in these program storage means.

There is a number of places where the applicant is talking about what the programmable storage means is doing in terms of what routines it is storing.

First, from Column 1, Line 58 through Column 2, Line 4, here it is talking about programmable storage means. It's not talking these, using the phrase automatic evaluating routines. But it is talking about routines, as you will see, that are performing these steps of evaluating information, of taking the information, matching the information to a set of actions, and then once it has that set of actions initiating a transfer of information relating to that, back at Column 11 and Column 2.

There is also, as applicants themselves have pointed out in other parts of their briefs, a glossary in

:28:05 their specification. They talk about an automatic
:28:09 monitoring station, which, again, is the portion of the
:28:09 claim that we are focusing on here. We are focusing on a
:28:13 particular means element within the monitoring station.
:28:15 Here is the automatic monitor station talks about the fact
:28:18 that it has this programmable storage means, which we know
:28:21 is storing. What does it store? We known from the claim
:28:25 and others parts of the specification, it is storing the
:28:28 automatic evaluation routines. Right here at Column 5,
:28:33 Lines 6 through 10, it tells you, in very general terms,
:28:35 what those automatic evaluation routines are, that they are
:28:39 the routines that identify events pertaining to security
:28:44 detected by detection processes and then carry out actions
:28:44 determined by the nature of the identified event. One of
:28:48 those actions is right here, sending information pertaining
:28:51 to security.
:28:52 This is telling you what the automatic
:28:54 evaluation routine is. And all our construction is doing,
:28:56 Your Honor, is taking what they mean by automatic evaluation
:29:01 routines, in Column 5, Lines 6 through 10, and just putting
:29:07 that into the context of this function otherwise, to make
:29:10 clear to the jury, to make clear to a person of ordinary
:29:14 skill in the art, what the automatic evaluation routines are
:29:18 that are being stored.
:29:20 So once we have determined what the function is,

:29:25 again, one way or the other, we think there are three
:29:28 components that the specification identifies as carrying out
:29:32 this function of storing the automatic evaluation routines.
:29:37 I don't think there is a large disagreement about where in
:29:40 the specification the applicants are talking about the
:29:43 actual routines being carried out and where they are
:29:45 located. You will see here, basically, the majority is in
:29:49 Column 7 and Column 8, they do it with respect to Figure 2.

:29:52 You will see here they talk about the alarm
:29:55 monitoring system 102, which is the first component of our
:29:59 corresponding structure we are asking you to adopt. That is
:30:02 saying, that is the intelligence embedded within the AMS.
:30:08 Remember, the AMS is the monitoring station that we are
:30:10 talking about, of which this means limitation is part.

:30:12 What they are saying is, the intelligence
:30:15 embedded in the AMS is in the alarm monitoring system. That
:30:20 routine is stored right there in the AMSys 102. It says
:30:25 that when an alert is passed on from the from the AMD, the
:30:31 AMSys, which is the first part of our structure, consults
:30:33 the ACU configuration database 103 to decide what to do.
:30:38 This is performing the automatic evaluation routine.

:30:42 Having determined the appropriate action to
:30:46 take, the AMSys makes entry into the activity log and
:30:46 instructs other systems to carry out actions. And one of
:30:50 those actions is sending messages, transferring information.

Right here, this 102, 103, all of these are involved in this function of initiating. It is not just transferring, but initiating the automatic transfer of information to a remote user terminal.

If the claimed function was simply transferring information, maybe there would be something to plaintiff's argument that you just look at the alert generation database, which we both agree is involved. But this isn't just transferring. This is initiating the automatic transfer. 102 and 103 we think are necessarily involved in that. That is why we have asked for that construction.

This is no longer relevant (indicating).

That's all I have on that term.

MR. YOON: Your Honor, two points, very briefly.

Your Honor, the function that we are talking about here is the storing of automatic evaluation routines to a machine, so it is the storing of those routines. As indicated in Slide 42, and they continue on Page 9, the storing of those routines, those automatic routines, are in fact in the alert generation database 104, Your Honor.

The other comment that I would make is, Your Honor, with regard to the automatic evaluation routines, they are trying to limit the meaning of that term to a single embodiment, and the courts have very clearly said that it is improper to limit this to an embodiment.

:32:50 With that in mind...
:32:55 TE COURT: Let's take a comfort break, counsel.
:32:57 (Recess taken.)
:41:27 THE COURT: Please, take your seats.
:41:29 Mr. Yoon.
:41:30 MR. YOON: Mr. Smith will be arguing the '591,
:41:34 Your Honor.
:41:36 MR. SMITH: Your Honor, the '591 patent is one
:41:58 where we have one claim dispute on, Your Honor, which I will
:42:03 address. The particular term at issue is the term
:42:06 "proprietary to the security system," which you can see on
:42:10 the screen on Slide 55, it appears in Claim 57 of the '591
:42:17 patent.
:42:20 The parties' respective constructions are shown
:42:25 here in the next slide.
:42:26 We have attempted to summarize the disputes.
:42:30 There is some agreement as to the core aspects of the
:42:33 construction, the language "only with the security systems."
:42:38 However, there is two disputes. One is Zonoff proposes
:42:42 using the term "useful with only with the security system,"
:42:48 iControl advocated for the term "used." Then Zonoff is also
:42:54 requiring in their proposed construction "useful only with
:43:01 the security systems of the same vendor." We believe that
:43:01 is too narrow.
:43:03 Starting with what Zonoff said in its brief,

Zonoff says that ordinarily, the term proprietary means something that is used, produced or marketed, and goes on from there.

That effectively is what iControl's proposed construction is. Proprietary is something that is used. Our construction tracks the ordinary meaning of the term proprietary, used only with the security system, proprietary security system.

But what Zonoff's proposed construction does is it departs from what they agree is the ordinary meaning of the term proprietary and what our construction is, and are advocating for a more narrow construction based on the theory that iControl defines the term proprietary in a more narrow way in the specification. But the Federal Circuit is clear that the standard for defining a term different from the ordinary meaning is quite exacting. What the Federal Circuit said in the Achamid case in 2015, said that the patentee must clearly set forth the definition of the disputed claim term other than its plain and ordinary meaning. So it must be a clear definition in the specification.

Here there is no such definition for the term proprietary to the security system, other than its ordinary meaning. Evening looking at Zonoff's own brief, the portion of the specification that they quote as supposedly

identifying the definition, it doesn't actually define the term proprietary. In fact, this section is talking about the prior art. This is talking about the prior art in the background section. It is not even talking about the invention.

In fact, the specification of the '591 patent repeatedly talks about being able to use components of the security system, having those components being useful to other components. For example, just to give you some context, if we go Figure 17, it shows there is a security system. It has different security system components, like a security panel, a wireless module. And the security system is connected to a gateway. The gateway is able to communicate with the security system, obtaining information. Certainly, it is able to find that information useful in some way, like giving information to the security system, by sending information.

So unlike the prior art systems where the security system was confined to the security system itself, iControl's invention talks about connecting the security system to a gateway so that the gateway can take information from the security system and find that information useful in same way.

There is also, if we go down in the specification, there is repeated examples where they are

talking about utilizing information from different vendors. So there is nothing here that limits and says it must only be by a single vendor. For example, talking about up here, an excerpt from Column 5, talking about a gateway device is able to manage multiple devices from any vendor. And later on in the same column it is says, Mobile user experience operates unchanged on whatever security equipment selected by a security system provider.

So it can use multiple different types of vendors' different security equipment.

In Column 4, here on Slide 61, we are talking about the security system of an embodiment automatically discovers the security system components. So it's obtaining information from the security system, finding it's useful in some way, and provides customers with full two-way access. So certainly, it is not working with just the same vendor. Customers are able to access this information.

And in Column 28, there is a passage that indicates that, unlike conventional security systems, which is what the prior art section of the patent is talking about, this invention can extend an existing security system, and operates using the proprietary wireless protocol of the security system manufacturer.

In other words, the system that iControl invented can use the different proprietary protocols for the

:47:45 different vendors, and it doesn't matter which particular
:47:51 system you hook up to, a gateway, it finds the information
:47:53 from those useful, taps into those security systems, and
:47:58 there is no limitation to a particular vendor.
:48:01 Even in Column 20, there is a specific
:48:04 discussion about the touch screen, which is one of the ways
:48:07 end users can utilize or interact with the iControl system.
:48:13 It says the touch screen incorporates multiple physical
:48:19 interfaces to security panels. So it can talk to different
:48:22 security panels from multiple vendors, not just the same
:48:28 vendors, e.g., GE Security, Honeywell, et cetera. In
:48:33 addition to the PanelConnect API implemented to support
:48:36 multiple security interfaces.
:48:38 This is a system that is not limited to one
:48:42 particular vendor or the same vendor, as Zonoff proposes.
:48:45 In fact, it is a system that the specification repeatedly
:48:49 talks about being able to utilize multiple vendors, and
:48:54 taking the information from the system and making it useful
:48:57 to other customers.
:48:59 So what we have here is a situation where Zonoff
:49:03 has not only failed to identify a specific definition that
:49:08 differs from the ordinary meaning of the term proprietary,
:49:08 but Zonoff is actually reading out the embodiment and the
:49:15 description of the patent. And there is a, the Federal
:49:19 Circuit has referred --

:49:22 THE COURT: I am quite well familiar with the Federal Circuit.

:49:26 MR. SMITH: That is the problem with Zonoff's construction.

:49:29 THE COURT: Let me ask you a question. You may have already addressed it and I may have missed it. In the context of patent, what is the difference between use and useful in the claims?

:49:39 MR. SMITH: So useful we thought would impose basically a very limited negative limitation, saying you can't find the information useful in some ways. In other words, I may not use the information directly. For example, in the security panel, the security panel may be directly using the information from the security sensors, but it's passing that information along to other devices which might find that information useful. So it's much more energetic. Nothing else can find this information useful. Certainly, things like if I were able to access my security system on my phone, I may not have the data that is coming directly from the data panel to the data system or the security system itself. But I am still able to find the information useful.

:50:32 So there is in the data a difference between useful and used. The dictionary definition that Zonoff cited, which they said was the ordinary definition of

:50:42 proprietary, they said use, which is what we are proposing. Useful is a more restrictive limitation on the term proprietary.

THE COURT: That is interesting. Of course, I am not a person of skill. But my reading is that yours is the more narrow definition.

MR. SMITH: In the context of their construction, is useful only to the same vendor.

THE COURT: I get the same vendor argument. I am talking about the words and the context in which they are used.

MR. SMITH: Frankly, the same vendor issue, if this is not a part of the construction, then there may not be a material difference between use and useful.

THE COURT: That is helpful. Thank you.

That is sort of where the rubber meets the road for me, about your assertion about use with the same vendor, Mr. Gorman.

MR. GORMAN: So I understand, Judge, the usefulness part, or the same vendor part?

THE COURT: Basically the same vendor.

MR. GORMAN: This is one where I am sitting here thinking making a tutorial of this patent would have been actually a little useful, because I think there might be some confusion when we talk about the system and looking at

:52:09 various portion of the specification, what it is we are
:52:14 exactly looking at.

:52:14 If you look at Claim 57, Claim 57 itself as a
:52:18 whole talking is about a system -- this is what the
:52:25 purported invention is -- a system which is more than the
:52:27 secured system. So understand that you have a system which
:52:30 comprises an input-output device, that device includes a
:52:35 lamp and a security system. So the security system and
:52:39 system are not synonymous here.

:52:42 What this is talking about is when you have a
:52:45 security system, that security system has a plurality, one
:52:48 or more parts, components, that are proprietary to the
:52:53 security system. So what are we talking about when we talk
:52:57 about proprietary to the security system? Not the system.
:53:02 The security system. If you look at how --

:53:07 THE COURT: If we can sharpen the focus here, I
:53:10 think the difference really between the parties is the same
:53:15 vendor language. Where does that come from?

:53:22 MR. GORMAN: It happens to come from the exact
:53:25 purpose of the invention. So you look here, and you can go
:53:27 through them, Judge, but for purposes of expediency, if you
:53:30 see what they are talking about, the exact purpose of this
:53:33 invention is, they are talking about coming up with systems
:53:36 that interface with proprietary technology. They showed you
:53:41 Figure 17. They are right, the whole point is to take a

:53:44 proprietary security system and overlay a system on top of that. When we are talking about a proprietary system, when we are talking about components that are proprietary to that system, that's what we are talking about. Every time they talk about proprietary, they were talking about this concept -- here is Column 1 and Column 2. This is what is happening in the prior art. This is what thy are overlaying on top of prior art for this system, where they are talking about each vendor typically develops a sophisticated proprietary technology to enable the installation and management of wireless sensors with little or no ability for the wireless devices, which are the components of the security system, to operate separate from the vendor's homogeneous system. That right there is what our construction is trying to address.

:54:31 To the extent there is a proprietary system, this claim is meant to take that proprietary system and address the fact that they want to integrally interface to that proprietary system.

:54:44 So that's why, when we are talking about proprietary, we are talking about the common understanding of proprietary.

:54:49 There is a suggestion here that somehow we are deviating from the plain and ordinary meaning. It might be helpful to think of your own television remote. When you buy a Sony TV, it comes with a Sony remote. You think of that remote as proprietary to that system. Why? Because that is useful only with the television system that you have.

Take, for example, a universal remote. A universal remote can be used with the system, but do we consider that proprietary?

THE COURT: It can be programmed.

MR. GORMAN: It can be programmed. It is not just useful only with the system of Sony. So this is all the dictionary definition was trying to capture. We think that is the plain and ordinary meaning. We think the concept of just use does nothing more than to say you have components. To say that components of the proprietary security system are used with the security system, that doesn't mean that they are proprietary at all. There is nothing in the sense of property.

They put up the dictionary definition, which I didn't put up here, Judge, if you look at that dictionary definition, they hang on to the use part. What they miss is that definition in a common understanding is something that is used, produced or marketed under exclusive legal rights of the inventor or maker.

There is this tie to proprietary if something is covered. So if you have components in the security system,

:56:20 all the claims require is that one or more of those
:56:24 components of that security system is built to operate with
:56:28 that security system alone.
:56:29 If you take a component for, I will use a
:56:34 Honeywell system, a component of a Honeywell system is
:56:37 proprietary to that Honeywell system if it doesn't work with
:56:40 another system. All this is saying, we think a person of
:56:40 ordinary skill in the art would understand, if you look at
:56:45 the problem you are trying to solve and what the purpose of
:56:49 the invention is, they are trying to take existing
:56:52 proprietary systems and put an interface over it, which is
:56:56 why --
:56:58 THE COURT: You just mentioned the word useful
:57:03 only with the security systems, to which the proprietary
:57:09 systems apply.
:57:12 MR. GORMAN: The only reason why we choose the
:57:14 use of the same vendor is because that's how they talked
:57:17 about it. They talked about vendors here, vendors there.
:57:23 THE COURT: It doesn't mean much. It just means
:57:25 the system to which the invention is being applied.
:57:31 MR. GORMAN: They talk about vendors here, like
:57:34 GE Security, Honeywell.
:57:36 THE COURT: Those are just examples.
:57:38 MR. GORMAN: The person that is making and
:57:47 providing the system.

:57:47 The last point that I will say, you also saw them put up Figure 17 and said that our construction is reading this out. I don't understand our construction to be reading this out at all. This is Figure 17. This is interfacing to a proprietary security system. For purpose of what we are talking about, these components are proprietary to this system. They are designed to work within the system. That doesn't mean under our construction that you can't have this larger, bigger system. It just means that when you are defining the components of the security system, you define them by the fact that they are all supposed to work together, like the vendor had designed them to.

:58:29 Thank you, Your Honor.

:58:37 THE COURT: Mr. Smith, did you want to respond?

:58:39 MR. SMITH: Thank you, yes.

:58:42 One point we may not have as much disagreement as we thought is counsel was explaining Figure 17 and was describing the security system 1710 as essentially these are the devices, we are showing all the different devices, these are the devices that were designed to work together with that system. And I think we agree on that point, that proprietary is talking about, they are devices that were designed to work with a particular system.

:59:14 The problem with Zonoff's proposed construction is, "of the same vendor," you are really getting down into it has to be from the same company.

THE COURT: I don't think so.

Do I understand that to be your position?

MR. GORMAN: I just mentioned vendor the way they were using vendor in the specification where the specification addressed this.

THE COURT: That is what I was trying to get to with your opponent. I don't think -- you will correct me if I am wrong, I can't put words in any lawyer's mouth. I don't think that is what he thinks in the sense you are using it.

MR. SMITH: For example, where the --

THE COURT: Is that correct?

MR. GORMAN: I am not sure it is correct, Your Honor. It goes back to the way the applicants were discussing this. They were discussing vendors or cross-vendor solutions. They are talking about a particular company that is providing this particular security system. So that's what makes it proprietary. The property is owned by somebody.

THE COURT: It could be some generic. It could be any company in which the system has been overlaid, any company's mechanism.

Go ahead. Do you understand that?

MR. GORMAN: Let me take a shot. It's not like this. It's not where you can take something and say I can put it into anybody's system. That's not what our construction would encompass.

Our construction says, you have a Sony remote. You need it to be a Sony system. Now, if it is the particular subcontractor, a person of ordinary skill in the art I think would have an understanding of what they meant by a vendor.

THE COURT: They should. Yes. Go ahead. That is how I am reading it.

MR. SMITH: And certainly part of the problem was whether at the time with their construction it had to be from the same company, which doesn't appear to be the position they are taking.

The other point of the specification of the '591 patent, if we could put our specification back, on Slide 63, there is the passage that talks about the touchscreen incorporates multiple physical interfaces to secure panels, and it says, (e.g. GE Security RS-485, Honeywell RF, etc.)

And these, for example, Honeywell RF, that is talking about Honeywell has a proprietary, or had a proprietary radiofrequency format. You could buy this device from companies that are different than Honeywell, but they worked with the Honeywell security panel. That would

be what we understood proprietary to mean. For example, proprietary format of sending data, it doesn't necessarily have to be from the same company. It could be from something that --

THE COURT: It need to be used or useful.

MR. SMITH: Used with that security system. In other words, maybe we are coming to the same place, both sides, designed to be used with the security system.

THE COURT: And I didn't get that. That is his point, I think, regardless of what you call it.

MR. SMITH: So something like designed to be used with the security system would be okay.

THE COURT: Very good.

MR. SMITH: Thank you, Your Honor.

MR. YOON: Your Honor, we are turning to the '871 patent. This patent, there are two terms. I know we are getting long in the day, so I will try to accelerate things.

You have the first term, gateway registry. Gateway registry appears in both Claims 1 and 15. I think it is very important if we can use Claim 15 as an example in Slide 67, Your Honor, it says, A gateway registry including logic that determines an identification of the account using a serial number of the gateway device, and communicates to the gateway device the identification and a server address

:03:56 **of a server of that includes the account information.**
:03:58 **Your Honor, we believe, as you can see in the**
:04:02 **parties' constructions, we believe that our construction is**
:04:06 **the correct one. Also, we believe that Zonoff's**
:04:10 **construction is not only incorrect but would create a lot of**
:04:14 **confusion by taking into the gateway registry and adding all**
:04:15 **the construction that they have. We think they are trying**
:04:19 **to limit it to one embodiment, and it is not consistent with**
:04:24 **it.**
:04:25 **Your Honor, the parties do agree, looking at**
:04:28 **Slide 70, that to a gateway registry can be a server**
:04:34 **component that maintains records relating to the gateways.**
:04:38 **The disagreement is whether the gateway registry**
:04:41 **is limited to storing information about a specific gateway**
:04:45 **device, a specific gateway server, and an account.**
:04:49 **Your Honor, I think what is here important is if**
:04:52 **you just look at the language of the claim, the claim**
:04:57 **language clearly defines what is required of a gateway**
:05:01 **registry. If you look at Claim 15, this is on Slide 72,**
:05:06 **Your Honor, that is talking about the gateway including**
:05:09 **logic that meets certain requirements.**
:05:12 **And if you turn to Slide 73, Your Honor, Slide**
:05:15 **73 is the dependent claim that specifically gives examples**
:05:20 **of what types of information needs to be stored in the**
:05:25 **gateway registry. So, for example, the gateway registry can**

include a plurality of serial numbers of a plurality of gateway devices corresponding to a plurality of networks. It can include a plurality of identifications of a plurality of accounts corresponding to it. And it can include the server address of the server that includes the account.

So all of the requirements we believe are set forth in the claims. What they are trying to do is in the term gateway registry, even though it is not confusing, limit it to one and only one embodiment. We believe that that is inconsistent with the specification.

Let me be clear. There is no dispute that the gateway registry can be a server. Looking at Slide 75, you can see the example of Figure 1, where you can see the gateway 110 in blue that you can indicate with the system gateway registry server 102, and you can have 116, the user's gateway server.

What would happen, to give context to the invention, for example, is on power-up, the gateway here that controls the devices for the house, within a power-up seeks the gateway registry server to find out what gateway server has its account information. The registry server lets the gateway know, and then the gateway has to communicate with the user gateway server, which then provides the account information, the key used. So, for example, what features are capable of being used in your

system, Your Honor, would be an example of the information that is passed.

So, Your Honor, the patent is very clear that the example that those structures are trying to use, which comes out of Figure 2, that says the gateway registry 214 of the embodiment in Figure 2, it is an embodiment, is coupled to the internet and comprises Table 220 to find the account number and the gateway server associated with the gateway serial number.

The specification clearly indicates that there are other arrangements contemplated and described herein. Your Honor, this is the most telling one here. If you look at Column 11, Lines 42 to 43 of the patent, it says multiple gateways can be handled per user account. There is no requirement in the patent that you have one gateway device associated with one server associated with one account.

The specification clearly indicates that multiple gateways can be handled per a single account.

The specification also goes on, Your Honor, to give different examples. In the example here of Column 2, Lines 19 to 23, the gateway registry communicates to the gateway the location of the server containing the account associated with the gateway.

In this embodiment, the only thing you needed to store was the location of the server containing the account

exact. In the example of Column 4, Lines 29 to 33, it only requires storing the account number and the serial number and not necessarily the addresses.

We believe the term gateway registry is clearly described in the claims, what is required to be stored is in the claims, and that Zonoff is trying to limit it to one and only one embodiment.

THE COURT: Thank you, Mr. Yoon.

Mr. Davis.

MS. DAVIS: Ken Davis for Zonoff, Your Honor.

So the term we are talking about is gateway registry. It does exist Your Honor, in Claims 1 and 15. The dispute between the parties, Your Honor, circles around a couple of things. We don't dispute that the gateway registry could be a server component. It is not required to be a server component.

Secondarily, it doesn't seem like the concept of registry is in dispute anymore. We believe it's clear that the gateway registry is consistently used in reference to a registry. And we'll point that out to Your Honor here, and throughout the specification, there is reference to a central repository that may be a gateway registry, not the other around.

The real crux of the issue, Your Honor, is whether each of these other elements is required. And we believe they are. We believe the patent consistently uses the term gateway registry to require each of these functions, and as a result it's necessary to construe gateway registry in that way. Gateway registry is not a term of art, Your Honor.

A tutorial may have been helpful here as well. Mr. Yoon did it a bit.

The gateway, Your Honor, we are told from the specification, manages devices using accounts, account information. It needs to get that account information in order to manage those devices. But at startup it doesn't have that information. So it utilizes the services of the gateway registry to find the server that has that account information.

This is Figure 2. We are told which gateway registry the gateway goes to to get that information. It is true, there may be multiple gateway registries that exist. The specification tells us, however, that while there may be several gateway registries existing, the gateway device knows only the address or location for the gateway registry which contains the gateway-unique address, that is the address unique to the gateway, specific to the gateway, account information, and the gateway server address for the gateway server holding the account associated with the gateway. In other words, the address of the specific gateway server. This is where the information in Zonoff's claim construction comes from, Your Honor.

You will see the phrase, its gateway unique address in red is different from the phrase serial number of a specific gateway that is used in Zonoff's construction. The reason for that, Your Honor, is that is what is claimed. The claimed embodiment utilizes the serial number. And we are told from the specification that the gateway-unique address and the serial number can be the same thing.

You will see here, Your Honor, at power-on, the gateway device initializes and sends a request to the central repository, for example, the gateway registry, specifying only the gateway-unique address, for example, the serial number. So the embodiment that's claimed, you will note in Claim 1 and in Claim 15 both require that serial number embodiment. And that is the reason why Zonoff's construction requires each of those elements.

IControl hasn't pointed to a single embodiment, Your Honor, where there is a gateway registry that doesn't keep all these elements. There may be a description where the registry communicates a portion of those elements, or, for example, where a master database will populate the gateway registry in a portion of those elements. But in each case, the gateway registry requires each one of those elements.

I should point out, with respect to claim differentiation, there are differences among each of these. First, there is a plurality of serial numbers that is not necessarily indicated by the definition of gateway registry in Claim 15, similarly in Claim 19. And then with respect to Claim 20, which depends on Claim 15, this refers to account information, and this embodiment happens to be an account, we have taken that into consideration in our construction, because the repository associates serial numbers of a specific gateway with an address of a specific gateway server and an account.

So that association may be in Claim 20 with respect to an account, in Claim 15 it may be with respect to account information.

Your Honor, we do believe this is the appropriate construction. It is the way the applicant used this term throughout the specification and gave it a special meaning in the specification.

THE COURT: Thanks, Mr. Davis.

MR. YOON: Your Honor, I will move to the next term. It is a pretty clearly argument. It is whether there is a limitation in the spec with a disclaimer. We think the claim language sets the requirements for those disputes.

So turning to the next element here, which is the second element in dispute with regard to the '871 patent, Your Honor, this is an incredibly long element, but the actual fight is relatively straightforward, Your Honor. Your Honor, it is whether or not the term is a means-plus-function element and then what structure is disclosed in the specification in the event it is a means-plus-function element.

Looking at Slide 83, Your Honor, to spare the court reporter, I won't read the entire element there because of the length. But I want to be brief, it is plain and ordinary meaning.

THE COURT: I am going to probably issue a brief order here. I am not sure I want to hear about the term atomic network, I want to here atomic network, because we are running out of time.

MR. YOON: Yes, Your Honor. That was an agreed-upon term.

Associative binding.

THE COURT: Associative binding and assigned server address.

MR. YOON: That was an agreed-upon term. We agreed on that.

THE COURT: And initiating by the gateway, all communications with a network operations center using the assigned server address.

MR. YOON: That is a disputed term. That is not related to this patent.

THE COURT: That's all I want to hear.

MR. YOON: I will let make Mr. Smith take over.

MR. SMITH: Your Honor, addressing the associative binding term in the '842 patent, now, the parties both rely heavily on what is disclosed in the specification for coming up with their competing constructions. But the parties disagree.

The disagreement largely rests on what part of the specification they are looking at and whether to include certain details or not include certain detail in the specification. In particular, the parties disagree on whether to include the language of device property plus values plus both from destination and source, whether that is the language may be included. Also, Zonoff is seeking to interject a negative claim limitation or prohibit having a code to do data conversion from between source device's format to the destination address identification data format.

Just to give you some perspective of what the dispute is over, on the screen we have Figure 7 of the patent. This shows there is a gateway and that this gateway is pertaining to three different networks, and these are different types of networks. For example, the one in green, the first network, is a network that has home automation

devices for turning on and off lights.

The blue network has IP cameras. And the other network, the third network, has door sensors.

So this idea of associative binding, at a very high level, is about connecting one device from one network to another device. To be more precise, Figure 10 shows a specific example where there's Device 1, which is a remote sensor of the gateway, and then associative binding between Device 1 and these other devices, Device 2, Device 3, which are lamps.

So what happens is the sensor data coming in onto the gateway, the gateway uses some internal software code, and comes up with some output data that is sent to here an actuator for turning on and off the lamp. This would be again an example of a door opens. That is the sensor data. That goes to the gateway. And the gateway realizes there has been a binding made between the sensor here, and meanwhile will turn on and off the light.

And iControl's construction comes from the specification. There is a section in the specification that is titled Associative Binding. This is the paragraph beneath that subheading. It says, Binding is the process of 'connecting' the output of one device (a sensor) to another (actuator). An example is a switch that triggers a light to go on.

We thought this was a simple definition that explained the concept, that if we had a jury trial in this case, it would be helpful in terms of the jury's understanding.

Now, there is a second section in the '842 patent, this is the section Zonoff relies heavily on, which talks about associative binding. Zonoff does not pull out a definition from this explicitly, but uses some of the discussion here to come up with this definition.

Importantly here, it is talking about associative binding, and mentions the gateway implements a form of associative binding. This is talking about a more specific example of what associative binding is. It goes on to talk about, in this specific example, in the next paragraph, associative binding defined on the gateway may include, it talks about, it may include index of the source device property, target device property, et cetera. Those are the parameters, the specific parameters that Zonoff is seeking to add in its claim limitation. Importantly, this is talking about one particular type of associative binding in the example.

There is nothing that limits this particular discussion to the invention of the patents or creates a special definition.

One issue we have with Zonoff's construction is

:21:45 the prohibition against heightened data conversion occurring
:21:46 with respect to associative binding. But the specification
:21:50 has numerous examples of there being binding where, for
:21:56 example, the gateway is doing data conversion. So there is
:21:59 repeat examples of a situation where there is sensitive data
:22:04 coming in, there the gateway is doing some sort of data
:22:08 conversion, and there is data going out on the other end.
:22:10 There is nothing that says associative binding does not do
:22:13 the data conversion.

:22:14 For example, we have some portions of the
:22:18 specification on the screen. Column 16, it talks about the
:22:21 gateway interprets the raw data. Column 17, there is a
:22:27 passage that says the gateway interprets the data and
:22:29 converts it to an index data point value. So again, the
:22:34 data conversion is happening. There is nothing in here that
:22:36 says data conversion cannot happen with associative binding.

:22:42 There is also in Column 19, there is a passage
:22:47 that says, Because the data from both the sensor and the
:22:51 actuator involved in a binding is normalized to standard
:22:56 data units. Again, this is saying there is a binding
:22:59 between a sensor and an actuator, and that there is some
:23:02 sort of data conversion. There is a normalization of the
:23:07 data to standard data units. Again, there is multiple
:23:09 examples where data conversion is being discussed.

:23:16 At the bottom portion of the slide, it indicates

:23:20 **the binding using the format conversion processes. Again,**
:23:25 **there is discussions of there is a binding between sensor**
:23:28 **and actuator, two different devices data's first, so there**
:23:31 **is no reason to impose a negative limitation that prohibits**
:23:38 **data conversion. Again, this is Column 18.**
:23:41 **In sum, this is a situation where Zonoff's**
:23:46 **proposed construction is overly narrow. Again, it is**
:23:51 **reading out descriptions in the specification in terms of**
:23:57 **what associative binding clearly encompassed. It also**
:23:59 **disregards what we believe is a clear definition of**
:24:05 **associative binding that would be helpful in terms of the**
:24:10 **jury understanding the term.**
:24:11 **THE COURT: Thank you, counsel.**
:24:14 **MS. DAVIS: I will be brief as well, Your Honor.**
:24:39 **So, Your Honor, iControl is advocating a**
:24:43 **construction of associative binding which would be define**
:24:49 **all binding, not just associative binding. And that is the**
:24:52 **term that is claimed. Binding is a broad term. It is the**
:24:55 **connection of the output from one device to another device.**
:24:58 **It is described in terms of process.**
:25:01 **There is another term, gateway binding. That is**
:25:04 **where the gateway is used to receive signals and interpret**
:25:08 **signals and relay messages to other devices. Then we have**
:25:13 **associative binding. That is the claim term. Associative**
:25:16 **binding is narrower than both gateway binding and binding.**

And it requires the gateway to implement a form of associative binding and that it cannot include code to do the data conversion from one place to another.

IControl points to this passage and says that because there is a heading Associative Binding followed by the definition of binding, that it must be that that is what the applicant intended to be the definition of associative binding.

But if you look at the provisional application that was the source of this filing, you quickly see that is not the case. Associative Binding was a heading that was used to describe a lighted column. First, the author set out to describe what binding was, before they he got into each of the narrow terms, gateway binding and associative binding.

I should say, associative binding is not a term of art. That is not a term that is used outside of this patent. There is not a glossary that we can go to that says this is what associative binding is. A person of ordinary skill in the art would have to look at this section and decide what associative binding meant based on what this section says associative binding does and what it doesn't do.

So you will see here in the first highlighted section, you can see that the associative binding uses the

gateway as the connection mechanism. So when we look to the bottom section that describes associative binding, we know that the connection mechanism is being used by the gateway and the gateway implements a particular form of associative binding. It goes on to describe what that form is with particularity. It says bindings are kept in a table that maps source device properties plus values to destination driver properties plus values. That is the form of associative binding that is being performed by the gateway and that's the form that is claimed.

It also says that these binding entries can map to individual values to different target entries. IControl made an issue about the fact that there is a question about whether it is the tables or the bindings. This makes clear that associative binding is the tables and the entries that are on the gateways, the mechanism that does the actual binding. I think that is made clear by this passage, Your Honor.

So the specification also makes clear what associative binding is not. The spec says that gateway binding can be implemented without associative binding. And it says that may involve the gateway containing code to do data conversion from the source device data format to the destination device data format. We are not told all of the ways that gateway binding can be implemented without

associative binding. But we are told about one. It is using data conversion. So a person of ordinary skill reading this would understand that this is how gateway binding is undertaken without associative binding and that gateway binding could not contain code to do the data conversion from the source data device format to the destination device data format.

Addressing this issue of whether this reads out an embodiment or not, there are embodiments that talk about code to do data conversion. There are also embodiments that talk about not using code to do data conversion.

This is one of those embodiments in Figure 2, where the gateway essentially contains these tables, and these tables help map device properties, plus values to definition device properties plus values. The gateway doesn't care about how to interpret the data that is being sent from Device 1 to Device 2. It takes that string in, it interprets the string, and sends the string out.

When we say it does not contain code to do data conversion from the source data device format to the destination device data format, that's what we are talking about.

So, Your Honor, we think it is perfectly appropriate to adopt Zonoff's construction here based on the way the specification tells us what associative binding is

:30:08 and what it is not.
:30:11 THE COURT: Mr. Smith, brief reply.
:30:15 MR. SMITH: One key point is Zonoff and iControl
:30:20 agree there are embodiments in the specification that do
:30:24 disclose data conversion.
:30:26 THE COURT: I heard that.
:30:27 MR. SMITH: There is nothing in the claim
:30:29 language itself or any of the passages in the specification
:30:32 that says associative binding, you can't use data version.
:30:35 It's certainly is possible you could use data conversion.
:30:38 And there is also embodiments where you don't use data
:30:42 conversion. But it is not prescribed, and there is no
:30:45 reason that the term, when discussed in fairly general
:30:48 context, would be -- I think both parties illustrated this
:30:55 in the specification, there is no reason to read out data
:30:59 conversion from associative binding.
:31:00 Nowhere is there anything that shows that
:31:07 somehow associative binding is a subset of gateway binding.
:31:08 The specification, if anything, indicates that you could use
:31:12 associative binding with gateway binding or maybe you don't
:31:17 need to use it. It seems like they are actually not
:31:24 concentric circles but perhaps separate circles. In any
:31:27 event, there is no reason to read in a negative limitation.
:31:35 THE COURT: Let's go on to the next one.
:31:45 The gravamen of the dispute here is over

:31:55 prosecution history estoppel.
:31:59 MR. SMITH: Yes. So the issue here is
:32:02 prosecution history estoppel. IControl believes there is no
:32:04 prosecution history estoppel. And the basis of our argument
:32:07 is for there to be prosecution history estoppel, there --
:32:11 THE COURT: Don't recite the canons.
:32:15 I teach the class.
:32:17 MR. SMITH: In this case it is far from clear.
:32:19 The prosecution history was something that spanned literally
:32:24 years and years. And the claims evolved substantially over
:32:27 the years, through the prosecution.
:32:30 And if we look at what Zonoff says in its brief,
:32:35 Pages 18 and 19, they concede that the scope of the claims
:32:39 varied over time during prosecution, and, in fact, the crux
:32:43 of their argument about prosecution history is with respect
:32:46 to early versions of the claim, Claim 1. That claim changed
:32:50 a lot over time. For example, if we look at Slide 108, the
:32:55 whole portion in green, that was for a time being in the
:32:59 application claims, and the arguments that Zonoff is
:33:04 pointing to for disclaimer were made while this language was
:33:06 in the claim. Before the claim was issued, as the years
:33:09 rolled by, iControl deleted all this language and came up
:33:12 with different language.
:33:15 Ultimately, when iControl was on the cusp of
:33:21 getting its patent and making arguments to the Patent

Office, the argument that it actually made to the Patent Office pertained to different claim elements.

The arguments that are being discussed here for potential history disclaimer, these were early arguments, long before the Patent Office decided to grant the patent. So when the Patent Office finally made a decision to issue the patent, it was based on arguments about the fact that the prior art reference, the Nadu reference, didn't include an atomic network that was separate and distinct from the other network and that it didn't have any type of associative binding.

These were different claims elements that iControl was using for purposes of its distinguishing over the prior art.

So, in any event, it is a case where there is no clear disclaimer because the prosecution history was very long and extensive, and the arguments that are being made are earlier in the process, and there is no connection between the arguments and why the Patent Office ultimately granted the patent.

THE COURT: Thank you, counsel.

Mr. Davis.

MR. DAVIS: Thank you, Your Honor.

Your Honor, on the screen, during prosecution, the applicant wrote in response to an examiner interview

:35:02 that the novel and unobvious feature was a gateway initiating all communications between the server and the gateway. That's prosecution history estoppel.

The fact that there are claims that were amended and they intended those amendments to somehow not impact the scope of the claims is relevant as to whether they made a statement that excluded -- or clearly defined what all communications between the server and the gateway meant. Indeed, they said later with respect to these claims all communications between the server, the network operations center server, and the gateway are initiated by the gateway. And then they contrasted a piece of prior art that didn't do that.

They had an interview with the examiner. And during that interview, the examiner clarified that regarding the gateway device performing all of the initiating of all communications, period. These statements were never disputed. They never reviewed the statements. And we will refer you, Your Honor to Hakim, that says if you want to disclaim statements you made in the prosecution, it has to be very clear, and there was none of that here, Your Honor.

THE COURT: A reply, Mr. Smith.

MR. SMITH: Your Honor, if we can look at a slide that Zonoff's presented. This in some ways proves a point I was trying to articulate earlier. The argument that

iControl made was with respect to this claim language that has been highlighted. This claim language was removed from the claim. And ultimately the claim language we are now talking about is a variant of what's down here, where it says wherein the communication between the gateway and the network operations center are initiated from the gateway at the premises using the assigned server address.

That was the claim language that was stated in the claim and was amended somewhat subsequently. The argument that Zonoff is pointing to is with respect to the claim language that was in the claim. IControl for whatever reason abandoned that claim language and went in a different direction with the claims.

It is not a case where iControl made an unambiguous and clear statement about the scope of the claims, because they were making arguments about claim language that was removed from the claim. This has nothing to do -- the arguments that were being made by iControl at this point in the prosecution have nothing to do with the issued claims because the scope of the claim changed dramatically throughout the prosecution.

THE COURT: Let me get a reaction to that.

MR. SMITH: They made this argument throughout the prosecution history. The statements made here could not be more clear. They distinguished the prior art and they

said what they thought the novel and unobvious feature was, the gateway initiating all communications the between the server and the gateway. They made the same statement --

THE COURT: What about his evolution argument.

MR. SMITH: The claims did evolve, and they continued to make these statements over time, and once that disclaimer is made and it's with respect to this term, I should point out -- once that disclaimer is made, that disclaimer is in the record. The public is entitled to rely on that disclaimer, in fact, even in continuation applications. That's what the Hakim case points to.

THE COURT: Mr. Smith, your last word.

MR. SMITH: The point, is the reason Zonoff is focusing on these older statements in prosecution history is that the arguments did change.

IControl did not consistently make arguments, when it came time for the Patent Office to look at the claim language that ultimately was issued which is far different than the claim language in 2008, at that point the arguments were very different, because the claim language in question perhaps did have this limitation that Zonoff is seeking to interject in the claim. Now we are talking about a different claim limitation that iControl wasn't even discussing.

So a person of ordinary skill in the art looking

:39:45 at the prosecution history wouldn't see a disclaimer with
:39:49 respect to the term we are talking about, because that
:39:51 wasn't the term they are even dealing with the PTO on. It
:39:54 was a different claim limitation and one that iControl
:39:58 eventually made.

:39:58 THE COURT: Counsel, I will get an order out to
:40:03 you, give or take, 30 days.

:40:07 Anything we need to talk about now?

:40:11 MR. GORMAN: Not from Zonoff.

MR. YOON: No, thank you, Your Honor.

(Counsel respond "Thank you.")

(Hearing concluded at 12:09 p.m.)

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Reporter: Kevin Maurer